

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
UNITED STATES OF AMERICA,)	
Petitioner,)	
)	
v.)	CIVIL ACTION NO. 95-cr-10284-PBS
)	08-cv-10963-PBS
ROBERTO PORTES,)	
Respondent.)	
_____)	

DENIAL OF
CERTIFICATE OF APPEALABILITY

March 31, 2010

Saris, U.S.D.J.

Pursuant to 28 U.S.C. § 2253(c)(3), the court **DENIES** the request for a certificate of appealability. The applicant has not made a substantial showing of the denial of a constitutional right. First, respondent raised the claim of ineffective assistance of counsel that he was prejudiced by the unprofessional errors of his trial attorney Mr. Cooper. However, the court resolved this question on factual grounds based on the credibility of witnesses, including the defendant, after an evidentiary hearing. No reasonable jurist would have found prejudice based on the history of the multiple representations. With respect to the second ground, no reasonable jurist would have found that defendant was entitled to a sentence reduction

for acceptance of responsibility in light of the severity of
obstruction of justice claims -- threats to kill.

S/PATTI B. SARIS
United States District Judge